NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1897 OF 2019
(@SPECIAL LEAVE PETITION (CRIMINAL) NO. 3478 OF 2019)

SUJIT TIWARI …APPELLANT(S)

Versus

STATE OF GUJARAT & ANR. …RESPONDENT(S)

J U D G M E N T

Deepak Gupta, J.

1. This bail application has been filed by one of the accused and we are giving the facts necessary only for the decision of his case.

2. The Indian Coast Guard received some intelligence inputs with regard to suspicious activities of a ship MV Hennry. Therefore, the Indian Coast Guard took their own ship and intercepted the vessel on 29.07.2017. The intercepted vessel MV Hennry was flying a flag of Panama. The Master of the ship was one Suprit Tiwari, and there were 7 other crew members, all Indian nationals. The Master and the crew members were not in possession of any licence, permit and could not even produce any document pertaining to departure from last port of call i.e. Abu Dhabi in U.A.E. or for the next port of call, i.e., Bhavnagar in Gujarat. It is alleged that the Master Suprit Tiwari when questioned admitted that they were carrying contraband substance in the nature of narcotics in the ship. He identified the locations and approximately 1445 kg of narcotics substance in 1526 packets was recovered. This was hidden in two cavities modified in the two tanks on both sides at stern of the vessel and also in the bollards and railings on both sides of the weather deck. These cavities and railings had been fabricated for concealing narcotics which were stored in water proof packets.

3. Information in this regard was given to the Narcotics Control Bureau, Ahmedabad (for short 'NCB'). The NCB carried

out investigation and after completing some investigation, filed a complaint before the Special Judge, NDPS Court at Porbandar in Gujarat on 22.12.2017 against the Master and the 7 crew members and 5 other persons including the appellant Sujit Tiwari, who is the brother of the Master of the ship Suprit Tiwari. In the complaint it is mentioned that after the Indian Coast Guard informed the NCB, a team of NCB went to Porbandar and once the ship MV Hennry came to the jetty on 31.07.2017, the same was boarded by the officials of the NCB, including the Intelligence Officer. Information was collected by the officials of the Indian Coast Guard and the Intelligence Officer opened one of the packets and found that it contained a substance which was a light brownish powder which on testing gave positive result for heroin. Thereafter, all the 8 persons i.e., Master and crew of the ship were detained and the contraband substance was off-loaded from the vessel and taken to the premises of the police authorities. Thereafter, the narcotic substance was weighed, samples were taken and further investigation was done.

4. According to Suprit Tiwari he was working for an Iranian National Sayed Ali Moniri (Seyed Mahmoud) and it was Sayed Ali Moniri who purchased the heroin and got the cavities made in

the ship. He offered huge amounts to the Master and crew members to illegally transport the heroin. Two crew members who did not accept the offer left the ship.

5. According to Suprit Tiwari, 4 Iranians namely Ebrahim, Mustafa, Mohammad and Rasool accompanied them on the ship and they started for Sharjah and reached Dubai the next day. About 1500 kg of heroin was loaded on the ship in Gwadar Port, Pakistan and 1 Pakistani National named Khalid Mohammad also joined the accused here. However, instead of going towards Egypt, as directed by their boss, Suprit Tiwari and crew members decided to bring the ship to India and changed the name of their vessel from Prince-II to MV Hennry. Suprit Tiwari and crew members after landing in India decided to sell all the drugs and get the ship dismantled as soon as the drugs got delivered to Vishal Kumar Yadav and Irfan Sheikh who assured them to buy the entire consignment. According to Suprit Tiwari, all the non-Indian crew members, i.e. four Iranians and one Pakistani national deboarded the ship after concealment of drugs.

6. The Master and crew members destroyed the Automatic Identification System (AIS) of the ship so that it could not be traced by the owner or any other person. In his voluntary

statement, Suprit Tiwari revealed that he had informed his brother Sujit Tiwari about some illegal activity in which he was to make a huge amount of money and he also told Sujit that he would get Rs. 50 crores through hawala. The appellant Sujit Tiwari was arrested on 04.08.2017. The allegation against the appellant is that he was part of the conspiracy to smuggle the huge quantity of contraband into India and therefore he should not be granted bail.

7. Mr. Siddharth Dave, learned senior counsel for the appellant urges that there is no material to connect the appellant with the crime. He has also argued that the appellant is entitled to a default bail since the investigation has not been completed within the period prescribed under Section 167 of the Code of Criminal Procedure, 1973 (for short 'CrPC') read with Section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

8. On the other hand, Mr. K.M. Natraj, learned ASG appearing for the respondents submits that keeping in view the bar of Section 37 of the NDPS Act, no bail can be granted to the appellant. As far as default bail is concerned he submits that

since the complaint was filed within time, the appellant cannot get benefit of Section 167 CrPC read with Section 36A of the NDPS Act even if investigation has not been completed. While deciding this bail application we are conscious of the provisions of Section 37 of the NDPS Act which lays down two limitations; one, that the court is prima facie of the view that the appellant is not guilty of the offence and secondly, that he is not likely to commit any offence while on bail.

9. We have gone through the statement made by the appellant under Section 67 of the NDPS Act. Without going into the question whether the statement is admissible or not, as this matter has been referred to a larger bench, we are, for the purpose of this case, taking the statement into consideration even though the appellant has resiled from the same.

10. The prosecution story is that the appellant was aware of what his brother was doing and was actively helping his brother. At this stage we would not like to comment on the merits of the allegations levelled against the present appellant. But other than the few *WhatsApp* messages and his own statement which he has resiled from, there is very little other evidence. At this stage it appears that the appellant may not have even been aware of the

entire conspiracy because even the prosecution story is that the brother himself did not know what was loaded on the ship till he was informed by the owner of the vessel. Even when the heroin was loaded in the ship it was supposed to go towards Egypt and that would not have been a crime under the NDPS Act. It seems that Suprit Tiwari and other 7 crew members then decided to make much more money by bringing the ship to India with the intention of disposing of the drugs in India. During this period the Master Suprit Tiwari took the help of Vishal Kumar Yadav and Irfan Sheikh who had to deliver the consignment to Suleman who had to arrange the money after delivery. The main allegation made against the appellant is that he sent the list of the crew members after deleting the names of 4 Iranians and Esthekhar Alam to Vishal Kumar Yadav and Irfan Sheikh through *WhatsApp* with a view to make their disembarkation process easier. Even if we take the prosecution case at the highest, the appellant was aware that his brother was indulging in some illegal activity because obviously such huge amount of money could not be made otherwise. However, at this stage it cannot be said with certainty whether he was aware that drugs were being smuggled on the ship or not, though the allegation is that he

made such a statement to the NCB under Section 67 of the NDPS Act.

11. At this stage, without going into the merits, we feel that the case of the appellant herein is totally different from the other accused. Reasonable possibility is there that he may be acquitted. He has been behind bars since his arrest on 04.08.2017 i.e. for more than 2 years and he is a young man aged about 25 years. He is a B.Tech Graduate. Therefore, under facts and circumstances of this case we feel that this is a fit case where the appellant is entitled to bail because there is a possibility that he was unaware of the illegal activities of his brother and the other crew members. The case of the appellant is different from that of all the other accused, whether it be the Master of the ship, the crew members or the persons who introduced the Master to the prospective buyers and the prospective buyers.

12. We, however, feel that some stringent conditions will have to be imposed upon the appellant.

13. We direct that the appellant Sujit Tiwari be released on bail upon furnishing a bail bond in the sum of Rs.10,00,000/- (Ten Lakhs only), with two sureties of the like amount to the

satisfaction of the Special Judge, NDPS Court at Porbandar on the following conditions:-

(a) The appellant shall deposit his passport, if any with the Court.

(b) The appellant shall either stay in Porbandar or Kolkata. He shall not go to any other place.

(c) The appellant shall give his cell-phone number to the police authorities and shall not change his cell-phone number without permission of the trial court.

(d) Whether the appellant remains in Porbandar or Kolkata, in Kolkata he shall report to the Entally police station daily at 09:00 A.M. , and in Porbandar he shall report to the Investigating Officer of the NCB at 09:00 A.M. everyday.

(e) The appellant shall join the investigation as and when called upon to do so before the authorities of the NCB.

(f) The appellant shall not in any manner hamper or try to interfere in the investigation.

(g) Once the trial begins, the appellant shall not in any manner try to delay the trial.

14. If the appellant violates any of these terms, the NCB shall be entitled to straightaway apply to the Special Judge for cancellation of his bail.

15. The appeal is disposed of on the aforesaid terms. Pending application(s), if any, stand(s) disposed of.

.....J.
(L. Nageswara Rao)

.....J.
(Deepak Gupta)

New Delhi
January 28, 2020